

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6790

BILL NUMBER: SB 265

NOTE PREPARED: Jan 3, 2008

BILL AMENDED:

SUBJECT: Criminal Gangs.

FIRST AUTHOR: Sen. Broden

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: *Real Property Nuisances:* The bill provides that real property used by a criminal gang in furtherance of the commission of a crime is a nuisance (and may be abated accordingly), and provides an exception if the property owner is unaware that the property is being used in furtherance of the commission of a crime.

Forfeiture of Real Property and Vehicles: It allows the forfeiture of certain property used in furtherance of a criminal gang offense.

Definition and Misdemeanors: The bill also broadens the definition of "criminal gang" and allows certain misdemeanors committed by gang members to be sentenced as Class D felonies.

Effective Date: July 1, 2008.

Explanation of State Expenditures: *Summary-* State expenses for incarceration could increase if misdemeanors are charged as felonies when it can be proven that the offender was a gang member. However, felony offenses provide more revenue than misdemeanors to the Common School Fund. Also, the changes in the definition of a criminal gang will have indeterminate fiscal impact as it is used in several sections of the code unrelated to criminal penalties, but could potentially increase the number of offenders convicted of criminal activities associated with criminal gangs.

Local unit costs could also increase to bring an action to abate or enjoin a nuisance. Individuals may bring actions to abate or enjoin a nuisance as well, which could result in additional court fee revenues. Vehicle or real property seizure could minimally increase costs for local sheriffs and prosecutors, although costs may

be offset through the sale or auction of the seized property. The costs of incarceration for county jails may be reduced if offenders are sentenced for Class D felonies rather than misdemeanors.

Definition of Criminal Gangs - Non-Criminal Code Sections - The definition of a criminal gang is used for the Anti-Gang Counseling Pilot Program and Fund in the Department of Education. It appears in the definition of psychologically affected properties and aggrieved person for purposes of civil remedies for racketeering activity. Also, limited liability of parents for damages caused by a child refers to this definition. The fiscal impact of changing the definition for these purposes is indeterminate, but unlikely to cause additional state expenditures.

Definition of Criminal Gangs - Criminal and Juvenile Code Sections: There are two criminal offenses involving criminal gangs including criminal gang activity, a Class D felony, and criminal gang intimidation, a Class C felony. Under IC 31-30-1-4, the juvenile court does not have jurisdiction over these cases. There are no data available to indicate if more offenders may be convicted of these crimes based on a broader definition of criminal gang.

Racketeering Activity: Also, a violation of the sections concerning criminal gang activity or intimidation is a racketeering activity and may lead to a conviction for corrupt business influence, a Class C felony.

Misdemeanors: If the state can show that a misdemeanor was committed by a person who knowingly and intentionally was a member of a criminal gang and the crime was at the direction or in affiliation with the criminal gang, the offender would be sentenced as a Class D felony.

Background: Under current law, a criminal gang is a group of at least three members that either promotes, sponsors, assists, or participates in, or requires as a condition of membership the commission of a felony. Under the bill, a criminal gang would still consist of three members, but the gang would have to be an ongoing organization, association, or group that has as its primary activity the commission of a felony.

Depending upon mitigating and aggravating circumstances, a Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor, and a Class C felony is punishable by a prison term ranging from 2 to 8 years. The average expenditure to house an adult offender was \$19,185 and \$63,138 for a juvenile in FY 2007. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months and for all Class C felony offenders is approximately two years.

On average between 2002 and 2006, there were two offenders a year committed to a state correctional facility for criminal gang activity and one offender committed for criminal gang intimidation in 2006. Between 2002 and 2006, seven offenders a year on average were committed to a state correctional facility for corrupt business influence.

Explanation of State Revenues: *Civil Actions for Criminal Gang Activity or Intimidation or Real Property Nuisances*: If a person suffers a pecuniary loss as the result of criminal gang activity or intimidation, the person may bring a civil action against the offender. Also, an individual whose property is injuriously affected or personal enjoyment is lessened may bring an action to abate or enjoin a nuisance. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing

fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$17), the public defense administration fee (\$3), the court administration fee (\$3), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

A county, city, or town attorney may bring a civil action to abate or enjoin a nuisance, as well. The nuisance may be enjoined or abated and damages recovered for the nuisance if the action is successful. A local unit does not pay court fees to bring an action, but a losing defendant may be ordered to pay court fees.

Criminal and Juvenile Code Sections: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony and a Class C felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the judicial salaries fee (\$17), the public defense administration fee (\$3), the court administration fee (\$3), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Misdemeanors: More revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court. The maximum fine for a Class A misdemeanor is \$5,000, for a Class B misdemeanor is \$1,000, and for a Class C misdemeanor is \$500, while the maximum fine for a Class D felony is \$10,000.

Forfeiture of Real Property and Vehicles: The proceeds from the sale of a seized vehicle or real property are distributed first to the county sheriff to cover sale costs; then to any person holding a valid lien or having an interest in the property; and then to the Common School Fund as ordered by the court.

Explanation of Local Expenditures: *Criminal and Juvenile Code Sections:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase.

Misdemeanors: If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. The maximum term of imprisonment for a Class A misdemeanor is up to one year, for a Class B misdemeanor is up to 180 days, and for a Class C misdemeanor is up to 60 days. The average daily cost to incarcerate a prisoner in a county jail is roughly \$44.

Forfeiture of Real Property and Vehicles: The prosecuting attorney brings an action to seize a vehicle or real property and may retain an attorney who is not a deputy prosecuting attorney.

Explanation of Local Revenues: *Penalty Provisions:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee (or \$120 criminal costs fee) that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Forfeiture of Real Property and Vehicles: A county sheriff may retain proceeds from the sale of a seized vehicle or real property to offset costs associated with its sale.

State Agencies Affected: Department of Education; Department of Correction.

Local Agencies Affected: Trial courts; local law enforcement agencies; county, city, or town attorneys.

Information Sources: Indiana Sheriffs' Association.

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